

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA

v.

TERRENCE SMITH

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CRIMINAL NO. JFM-05-061
CIVIL NO. JFM-11-953

MEMORANDUM

Terrence Smith has filed a motion under 28 U.S.C. §2255. On April 2, 2012, I filed a memorandum addressing what I characterized as a “close” question raised by his motion: whether Smith violated the federal witness tampering statute. I concluded that he did violate the statute.

By agreement of the parties, consideration of the other issues raised by Smith was deferred pending my addressing the first issue. The government has now filed an opposition to Smith’s motion, addressing those issues. Smith has not filed a reply.

All of the issues raised by Smith, other than the allegation that he did not violate the federal witness tampering statute, are frivolous. His counsel was not ineffective in any way. First, the record (as established by an affidavit of Smith’s trial counsel, Charles G. Bernstein) demonstrates that Mr. Bernstein diligently prepared for trial and conducted himself as one would expect experienced trial counsel, such as Mr. Bernstein, to do during the trial. Second, Mr. Bernstein was certainly not ineffective in raising the jurisdictional issue by way of a motion for judgment of acquittal at trial. His decision to wait to raise the issue until after the government had presented its evidence was tactical, reasonable, and wise. Third, it was entirely within the

court's discretion to permit the government to reopen its case to present evidence relating to the jurisdictional issue, and Mr. Bernstein was not ineffective in not persuading me not to permit the government to reopen its case. Fourth, there was no error in the instructions given by this court and therefore Mr. Bernstein was not ineffective in objecting to what Mr. Smith now alleges to have been erroneous.

A separate order is being entered herewith denying the motion filed by Mr. Smith pursuant to 28 U.S.C. §2255.

Date: July 27, 2012

/s/
J. Frederick Motz
United States District Judge